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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Policies and Procedures Regarding an )  
Accelerated Docket for )  
Complaint Proceedings )  
)

CC Docket No. 96-238

**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files its comments in response to the Public Notice, DA 97-2178 ("Notice"), released by the Common Carrier Bureau ("Bureau") and the Competition Enforcement Task Force ("Task Force") on December 12, 1997 in the above-captioned proceeding. WorldCom supports the procedural measures proposed in the Notice, and urges the Bureau and Task Force to commit to carrying out their critical enforcement responsibilities in a timely and effective manner.

**I. INTRODUCTION AND SUMMARY**

WorldCom, Inc. is a premier global telecommunications company. Through its wholly-owned operations WorldCom Technologies, Inc., MFS Telecom, Inc., WorldCom Network Services (d/b/a WilTel Network Services), and UUNET Technologies, Inc., the new WorldCom provides its business and residential customers with a full range of facilities-based and fully integrated local, long distance, international, and Internet services. In particular, WorldCom currently is the fourth largest facilities-based interexchange carrier ("IXC") in the United States, as well as a significant facilities-based competitive local exchange carrier ("CLEC") and Internet service provider ("ISP"). As a company situated at the center of the rapidly-developing convergence of these and other communications markets, WorldCom has a

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truly unique perspective on telecommunications policy issues.

In its recent Formal Complaint Order, the full Commission adopted new, streamlined rules for handling formal complaints filed with the Commission.<sup>1</sup> In that order, the Commission encouraged its staff to explore the use of alternative approaches to adjudicating complaints, and noted that the Task Force was considering various forms of complaint adjudication and enforcement "to ensure that the goals underlying the pro-competitive policies of the 1996 Act and the Commission's implementing rules and orders are met."<sup>2</sup>

In the Notice, the Bureau and the Task Force jointly seek comments on "issues relating to the possible alternative forms of complaint adjudication that, complementing the rules recently announced in the [Formal Complaint Order], ultimately should redound to the benefit of telecommunications consumers by enhancing competition in the relevant markets."<sup>3</sup> More specifically, the Notice outlines several ideas on a new, accelerated hearing-based complaint process and asks parties to submit comments on how that process "could be designed to ensure speedy, consistent and fair adjudication of complaints."<sup>4</sup>

WorldCom strongly supports the creation of an "accelerated docket" to hear complaints concerning ongoing damage caused by anticompetitive actions that violate the 1996 Act. For the most part, the proposals contained in the Notice are both equitable and efficient.

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<sup>1</sup> Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, Report and Order, CC Docket No. 96-238, FCC 97-396 (released November 25, 1997) ("Formal Complaint Order").

<sup>2</sup> Formal Complaint Order at para. 5.

<sup>3</sup> Notice at 2.

<sup>4</sup> Id.

At the same time, the Commission must ensure that any decision to initiate and implement this new complaints process is not the last word on enforcing the 1996 Act. Without active and consistent Commission attention to swift investigation of complaints, and sure enforcement of competitive safeguards, the goal of irreversible local competition that is at the heart of the 1996 Act will never become reality.

**II. THE COMMISSION MUST COMMIT TO SWIFT AND SURE RESOLUTION OF COMPLAINTS CONCERNING ANTICOMPETITIVE ACTIVITIES BY INCUMBENT LOCAL EXCHANGE CARRIERS**

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WorldCom believes there can be no rational dispute over the veracity of the opening sentence of the Notice: "The development of robust competition for all telecommunications services requires that there be a means of swift and fair dispute resolution between competitors."<sup>5</sup> Nonetheless, this observation, however compelling and irrefutable it sounds, must become more than mere words. Indeed, it must become the guiding principle that governs the future actions of this Commission.

The creation of the Task Force obviously is an important first step in the process of swift and sure enforcement of the 1996 Act. In its recent Formal Complaint Order, the Commission noted that the Task Force possesses the mandate of "identifying and investigating actions by common carriers that may be hindering competition in telecommunications markets and with initiating enforcement actions where necessary to remedy conduct that is unreasonable, anti-competitive or otherwise harmful to consumers."<sup>6</sup> While the first of these tasks (identifying

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<sup>5</sup> Notice at 1.

<sup>6</sup> Formal Complaints Order at para. 5.

and investigating anticompetitive conduct) is by no means an unimportant one, WorldCom believes that it comes to little unless coupled with the second task (actual enforcement). WorldCom does not at all question the Commission's commitment to fully implement the 1996 Act, including taking prompt and effective enforcement actions where necessary; indeed, the Commission's rendering, over the past two years, of dozens of implementation rulemakings within a very brief time is nothing short of remarkable. Given the inevitable give-and-take of the regulatory process, however, and the undeniable battle for scant resources and attention, the best of intentions often are not enough. The Commission must focus its collective will on the singular task of enforcing the dictates of the 1996 Act in a way that protects consumers and competition, and provides an effective deterrent to future anticompetitive conduct.

The need for swift investigation, coupled with sure enforcement, is further heightened by the ILECs' actions in numerous recent court cases that threaten to undercut the very foundations of the 1996 Act, and this Commission's concomitant policymaking authority.<sup>7</sup> Should the ILECs succeed in those challenges, local competition will only be further delayed and denied, to the ultimate detriment of consumers across the country. Whatever the outcome of those challenges, however, the FCC's various regulatory tools, and the ability to use them to

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<sup>7</sup> See, e.g., Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. July 18, 1997), order on rehearing, No. 96-3321 (8th Cir. Oct. 14, 1997), petition for mandamus pending, petitions for writ of certiorari pending, AT&T et al v. Iowa Utilities Board, Nos. 97-826 et al. (interconnection); SBC v. FCC (8th Cir. 97-2618) (access charge reform); SBC v. FCC (8th Cir. 97-3389) (shared transport); USTA v. FCC (D.C. Cir. 97-1469) (price caps); Texas OPUC v. FCC (5th Cir. 97-60421); Bell Atlantic v. FCC, No. 97-1432 (D.C. Cir. Dec. 23, 1997) (non-accounting safeguards); SBC v. FCC (D.C. Cir. 97-1425) (Oklahoma Section 271); US West v. FCC (10th Cir. 97-9518) (local number portability); SBC v. FCC, Civil No. 7-97-CV-163-X (N.D. Texas Dec. 31, 1997) (constitutionality of Sections 271-275 of 1996 Act).

determine anticompetitive abuses and prescribe remedies, remain untarnished. WorldCom urges the Commission to maintain the resolve, articulated so clearly in the Notice, to do all that is necessary to protect and advance the competitive promises inherent in the 1996 Act.

### **III. THE COMMISSION SHOULD ADOPT AND IMPLEMENT THE PROPOSED RULE CHANGES AS SOON AS POSSIBLE**

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WorldCom responds below to the specific proposals contained in the Notice. In general, though, WorldCom supports an "Accelerated Docket," complete with a sixty day time frame and the presentation of live evidence and oral argument, that would serve as a hearing-style alternative to the usual formal complaint process.

#### **1. Need for Accelerated Docket**

The need for an accelerated docket to consider complaints of anticompetitive conduct by the ILECs is self-evident. Every day that an ILEC engages in intransigence and misconduct prevents a would-be new entrant from competing actively in the local market. As a result, the ILEC's entrenched monopoly is further fortified, while the CLEC faces frustrated customers and mounting financial and goodwill losses. In short, delay is one of the ILECs' most powerful allies. More importantly from the Commission's public interest perspective, however, the benefits of competition are being denied to consumers, a result which essentially is thwarting Congress' express intention that all telecommunications markets be opened to competition.

The Notice first asks what particular categories of disputes should be eligible for accelerated treatment. While ideally the Commission should allow as many formal complaints as possible to qualify for the accelerated docket, in reality the Commission's lack of resources

precludes such a result. Instead, it appears reasonable to limit these types of proceedings to issues involving competition in the provision of telecommunications services. More precisely, the Commission should offer its accelerated docket in any situation where an incumbent local exchange carrier is being accused of violating one or more of its obligations under the 1996 Act.

WorldCom also encourages the Commission to work cooperatively with state utility commissions on competitive complaint matters within their relative and shared jurisdictions. In pertinent situations, the Commission should invite the states to bring matters to the FCC's attention, and allow the states to intervene and introduce evidence themselves.

## **2. Minitrials**

WorldCom supports all aspects of the minitrial system suggested in the Notice. In particular, parties should be able to present evidence and arguments to the fact finder as a means of permitting closer inquiry into relevant factual issues. WorldCom also supports the 60 day complaint process generally, and agrees that it is feasible to conduct minitrials no later than 45 days after a complaint has been filed. Each side should receive an equal amount of time to present its evidentiary case and cross-examine witnesses. WorldCom suggests that the Commission's rules establish a maximum amount of time granted to each side, with the fact finder given clear discretion to expand that amount upon a showing of good cause.

## **3. Discovery**

WorldCom is concerned that, given the rather strict discovery rules adopted in the Formal Complaints Order, coupled with the limited time that will be available under an

accelerated schedule, it may not be possible for a party to collect enough evidence to sustain (or, in some cases, defend against) a complaint. WorldCom believes that the Commission should take several additional steps to rectify this problem. First, the Commission should retain a fairly broad definition of "relevant materials," and not require the parties only to disclose materials "likely to bear significantly" on any claim or defense.<sup>8</sup> Instead, a party should surrender all relevant documents that reasonably could be considered material to any party's claims, counterclaims, or defenses. Second, parties should be required to submit all discovery requests and disputes to the Task Force prior to the initial status conference, with the Task Force acting on those requests at the conference. Third, parties should be required to exchange all relevant documents at some defined point after filing initial pleadings, and certainly prior to the initial status conference. Fourth, the Commission should define and enforce substantial monetary sanctions for a party's failure to provide discovery on a timely basis.

#### **4. Pre-Filing Procedures**

As a condition for acceptance on the Accelerated Docket, WorldCom agrees that parties should be required to first attempt informal, pre-filing settlement discussions under the auspices of the Task Force. This would have the multiple purpose of crystallizing the pertinent issues, encouraging early settlement, educating the Task Force, and even "weeding out" potentially undeserving complaints.

The Notice asks whether, aside from the parameters discussed in Issue 1, other criteria should be adopted for accepting a formal complaint on the accelerated docket.

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<sup>8</sup> See Notice at 4.

WorldCom believes that either party (complainant or defendant) should be allowed to demonstrate to the Task Force, in a pre-complaint filing submission, that the complaint will involve one or alleged violations of specific provisions of the 1996 Act. Such a showing should be supported factually by sworn affidavit or other evidence. Further, previously-filed complaints should be eligible for Accelerated Docket, upon proper showing by the complainant in a separate motion to the Task Force. A party should show that the complaint will involve alleged violations of specific provisions of the 1996 Act, and will be supported factually by sworn affidavit or other evidence, and that the complainant has attempted informal settlement discussions under the auspices of the Task Force.

Finally, there is no reason why a defendant should not have the same right as a complainant to request an accelerated docket minitrial. The Commission's rules should reflect this option.

## **5. Pleading Requirements**

Assuming that the proposed pre-filing settlement procedure is adopted, WorldCom agrees with the proposal that an answer must be filed within seven to ten calendar days of a complaint. This appears to afford the defendant sufficient time for a thorough response, and also gives the Task Force adequate time to obtain resolution of the complaint within 60 days.

## **6. Status Conferences**

WorldCom agrees with the Notice that a status conference should be held no later than 15 calendar days after the complaint has been filed. This status conference would be



preceded by informal discussions with the Task Force concerning settlement, discovery, disputed issues, and schedule. Parties could file with the Task Force a joint statement on those issues, at least two days in advance of the status conference, as well as additional statements on stipulated facts, disputed facts, and legal issues. The initial status conference could then establish the briefing schedule.

**7. Damages**

WorldCom concurs with the proposal that the Commission adopt a bifurcated damages process, to be handled in a separate proceeding from the complaint itself. This division of labor will allow the Commission to focus on liability issues in the first instance, and remedy issues in the second.

**8. Other Issues**

At this time, WorldCom does not recommend other approaches to handling complaints in an accelerated docket. However, the Commission should remain open to revisions and new ideas, especially after the Commission and parties have had first-hand experience with the accelerated docket process.

**9. Review by the Commission**

WorldCom is concerned with one proposal in the Notice that all briefing of petitions for Commission review of Task Force decisions must be completed within 20 to 30 days of the initial decision. This very limited amount of time for parties to file (or oppose)

petitions for review, and then file multiple rounds of briefs, may not be sufficient in all cases. WorldCom recommends, instead, that the briefing schedule be completed no later than 45 days after a Task Force decision. Of course, to prevent costly delays in implementing Task Force decisions -- especially where anticompetitive actions are creating significant damage -- the Task Force should be allowed to enjoin such actions unless and until the Commission has reviewed the initial decision. WorldCom also approves of using en banc oral argument before the Commission in those instances where the Commission does not summarily adopt the initial Task Force decision.

#### IV. CONCLUSION

WorldCom applauds the Commission's obvious seriousness about resolving disputes concerning possible violations of the 1996 Act. The Commission should adopt its proposed rules, in accordance with the further policy recommendations made above by WorldCom.

Respectfully submitted,

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January 12, 1998

## **CERTIFICATE OF SERVICE**

I, M. Cristina Ayala, hereby certify that I have this 12th day of January, 1998, sent a copy of the foregoing "Comments of WorldCom, Inc." by hand delivery, to the following:

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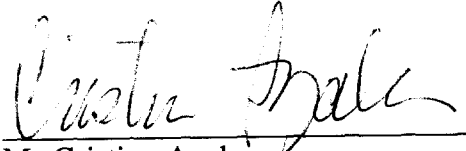
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